

## **Collin Juvenile Board Plan**

### **Preamble**

To implement the Texas Fair Defense Act (FDA, Acts 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government code 74.093, effective December \_\_\_\_, 2009.

#### **Prompt Detention Hearings**

- A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition authorized by §52.02, Family Code, including referral to the office designated by the juvenile board as intake for the juvenile court. The intake officer shall process the child according the requirement of §53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or listed holiday in which case the detention hearing shall be held on the first working day after the child is taken into custody.
- B. Prior to the detention hearing the court shall inform the parties of the child's right to remain silent as to the alleged conduct.
- C. All juveniles shall be represented by counsel at each detention hearing. If a parent/custodian has not retained an attorney to represent a juvenile at a detention hearing, the court appointed attorney for that day's hearings shall represent the juvenile at the detention hearing.

- C. The detention hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.
- D. The court shall provide the attorney for the child access to all written matter to be considered by the Court in making the detention decision.

## **Indigence Determination Standards**

### **Definitions:**

**A. "Total income"** In the case of a juvenile, the income of the child's parents or other person determined responsible for the support of the child shall be considered. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, etc., farm income unemployment compensation, Social Security benefits, and other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax return - 1040 or line 4 of the form 1040EZ. The income of the parent(s) or guardian who claimed the juvenile as a dependent on their most recent tax return shall be the primary source for determining income.

**B. "Household size"** shall be determined by the number of dependents claimed on the most recent U.S. Individual Income Tax Return 1040 or 1040EZ. If a U.S. Individual Income Tax Return has not been filed, the household size shall mean all individuals who are dependent on the child's parent(s) for financial support.

**C. "Liquid assets"** shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

### **Financial Considerations**

The financial considerations set forth below shall be used to determine whether a juvenile is indigent and shall be applied equally to each juvenile in the county. The total income of the juvenile, child's parent(s) or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies as indigent.

A juvenile who is determined by the Court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or State may move for reconsideration of an indigency determination.

A juvenile is considered indigent if:

- A. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human Services and published in the Federal Register; or
- B. the juvenile and the juvenile's parent(s) were not required by law to file the most recent U.S. Individual Income Tax return, either 1040 or 1040EZ) due to gross income below the filing requirements; and
- C. the juvenile and the juvenile's parent(s) liquid assets do not exceed \$2,500.00; or
- D. the juvenile and the juvenile's parent(s) liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the juvenile is charged: or
- E. at the time of requesting appointed counsel, the juvenile or the parent(s) of the juvenile have been determined to be eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Social Security Income, public housing or Collin County Indigent Health Care.

#### **Factors Not to be Considered**

- A. A juvenile's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the juvenile is indigent. Even when a juvenile has posted bail, the juvenile's financial circumstances are measured by the financial standards stated in this rule.
- B. The resources available to friends and families or relatives of the juvenile may not be considered in determining whether the juvenile is indigent. Only the juvenile's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.
- C. A juvenile shall not be denied the appointment of counsel merely because the person is employed.

#### **Partial Indigency**

- A. The Court may find a juvenile to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not impose manifest hardship on the juvenile or the juvenile's household.
- B. The family of an accused juvenile found to be partially indigent may be ordered by the Court to pay, while the case is pending, monthly installments commensurate with their ability to pay based upon the family's income and assets.

## **Reimbursement**

A juvenile who is ordered adjudicated and has exhausted all appeals, and his parents, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the juvenile's attorney, provided that a finding is made at the time of disposition that the juvenile and his/her parents have the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the juvenile's case.

## **Form Required for Indigency**

A juvenile, parent, or person responsible for the support of the child, who requests a determination of indigency and appointment of counsel shall:

- A. complete under oath a questionnaire concerning financial resources, or
- B. respond under oath regarding financial resources, or
- C. complete the questionnaire and respond to examination.

## **Minimum Attorney Qualifications**

### **Procedure for the Fair Allocation of Attorneys**

The Juvenile Board will receive written applications for court appointed attorneys and meet periodically to approve and update the list. The list shall be provided to all district judges, county judges, referees and clerks. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory. The Court shall appoint attorneys from the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the Court makes a finding of good cause on the record. An attorney who is not appointment in the order in which the attorney's name appears on the list shall remain next in order on the list.

### **Minimum Standards for Court Appointed Attorneys**

The minimum standards for placement on the list of qualified attorneys shall:

1. Be licensed and in good standing with the State Bar of Texas;
2. Exhibit proficiency, professionalism and reliability;
3. Maintain an office in Collin County, a telephone number, fax number and email access, and agree to update the District Clerk promptly of any changes; and
4. Complete ten hours average per year of CLE in criminal law, with six of those hours in juvenile law.

### **Graduated Lists**

Applications will be received for, and lists approved for, the following graduated lists. Each list details the qualifications required for placement on the list:

**A. Level One: Qualifications for Appointment for Conduct Indicating a Need for Supervision (CINS) and Delinquent Conduct and Commitment to the Texas Youth Commission is not an Authorized Disposition**

1. An attorney must have been licensed to practice law for a minimum of six months, meet the Minimum Standards for Court Appointed Attorneys set out above, and
2. That attorney shall have observed at least three stipulated juvenile adjudications, three contested juvenile adjudications, three juvenile dispositions and five detention hearings.

**B. Level Two: Qualifications for Appointments for Delinquent Conduct and Commitment to the Texas Youth Commission without a Determinate Sentence is an Authorized Disposition**

1. An attorney must have been licensed to practice law for a minimum of one year, meet the Minimum Standards for Court Appointed Attorneys set out above, and
2. That attorney must have substantial and active participation in one juvenile or criminal (class B misdemeanor or above) contested trial and ten juvenile adjudications or modifications, contested or uncontested, or ten criminal pleas, or a combination of these totaling ten proceedings, or
3. That attorney must be Board Certified in Juvenile Law or Criminal Law.

**C. Level Three: Qualifications for Appointments for Determinate Sentencing or Certification Proceedings**

1. An attorney must have been licensed to practice law for a minimum of three years, meet the Minimum Standards for Court Appointment Attorneys set out above, and
2. That attorney must have substantial and active participation in two felony jury trials, juvenile or criminal, and must have been lead counsel in one county or district level jury trial, or
3. That attorney must be Board Certified in Juvenile Law or Criminal Law.

**Annual Renewal and Review of Counsel**

Each year appointed court appointed counsel shall complete and file a renewal application which verifies their contact and other required information. Counsel shall also attach a copy of the State Bar CLE compliance form as proof that he or she has completed the annual CLE requirements in this plan. The renewal application shall be filed with the Indigent Defense Office by December 31 of each year.

**Prompt Appointment of Counsel**

The Collin County Juvenile Board designates all district and county judges, and designated court referees, within Collin County to appoint counsel for indigent children within the guidelines set forth below.

### **Appointment of Counsel for Children in Custody**

A. If a juvenile is detained and has established indigency, the Court shall appoint an attorney to represent the juvenile until disposition of the allegations against him/her.

Forms to request a court appointed attorney shall be provided to the juvenile or the juvenile's parents upon request. By 4:00 p.m. on the day following the appointment, the juvenile clerk shall notify by email or fax the attorney of the appointment and that the juvenile is in detention.

B. If a juvenile is detained and indigency is not established, the Court shall advise the parent/custodian to retain an attorney immediately. The parents shall notify the probation officer by 4:00 p.m. on the following working day of the name of the juvenile's attorney.

If the parents have not retained an attorney by 4:00 p.m. of the next working day following the initial detention hearing, the probation officer shall submit a request for appointment of counsel for the detained juvenile pending an indigency/show cause hearing.

C. If a juvenile is released at or prior to the detention hearing, the probation officer shall inform the juvenile and the juvenile's parents of the right to request a court appointed attorney and shall provide forms to request a court appointed attorney to the juvenile's parents.

### **Appointment of Counsel for Children Out of Custody**

A. The Court, upon making a finding of indigency, shall appoint an attorney on or before the fifth working day after the date a petition for adjudication of discretionary transfer has been served on the child. By 4:00 p.m. on the day following the appointment, the juvenile clerk shall notify by email or fax the attorney of the appointment and the next court date.

B. The Court, upon making a finding of indigency, shall appoint an attorney on or before the fifth working day after the motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed. By 4:00 p.m. on the day following the appointment, the juvenile clerk shall notify by email or fax the attorney of the appointment and the next court date.

C. The Juvenile Board shall adopt the computerized attorney listing system developed in conjunction with Information Services Department and direct that all appointments shall be made from the list as published by the Information Technology Department on the AS400. If the AS400 computer system is inoperable for any reason, the appointing judge or magistrate shall appoint an attorney from the written list of approved attorneys.

## **Attorney Selection Process**

### **Procedures for the Fair Allocation of Attorneys**

The Court Appointment List shall be provided to all district judges, county judges, referees and clerks. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory. The Court shall appoint attorneys from the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the Court makes a finding of good cause on the record.

An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

### **Distribution of Cases**

A. An attorney may receive an appointment for the highest level of offense for which he or she is qualified and for each lower level of offense. New attorneys will be added to the end of the list as it exists at the time they are added.

B. The Court may replace an attorney from appointment on a case or remove an attorney from the Court Appointment List who fails to contact a detained juvenile on the first working day after the date of appointment, or fails to interview a juvenile who is not being detained as soon as practicable, or for good cause shown on the record.

C. Qualified attorneys will be assigned detention hearings in the same manner as described in the Graduated Lists, under Minimum Attorney Qualifications.

### **Removal and Review of Counsel**

Any judge member of the Juvenile Board may immediately remove from the Court Appointment List any attorney who intentionally or repeatedly fails to fulfill their obligations to their client or the Court. Upon such event, the board of judges shall review the matter at its next scheduled meeting. Unless a majority of the board of judges votes in favor of restoring the attorney's name the attorney's name shall not be restored to the Court Appointment List.

### **Fee and Expense Payment Process**

The juvenile board adopts the following fee schedule for appointed attorneys:

A minimum of \$75 an hour and a maximum of \$125 an hour, or a total fixed fee as set forth below:

A. Detention hearings: \$100.00

B. Motion hearings (e.g., Chapter 55): \$300.00

C. Misdemeanors, CINS or uncontested dispositions: \$500.00 (\$200.00 for second and each subsequent case at the discretion of the Judge)

D. Contested dispositions: \$750.00

- E. Case which results in a trial: \$375.00 per half day, plus up to \$1,000 pretrial
- F. Appeals: \$3,500.00, except for Anders briefs and complicated appeals, as determined by the Judge

The Court may vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of the circumstances beyond the control of the appointed counsel.

**Procedure With Prior Court Approval:**

Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for expenses must state as applicable:

- A. the type of investigation to be conducted or the type of expert to be retained;
- B. specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
- C. an itemized list of anticipated expenses for each investigation or each expert.

The Court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the Court denies in whole or in part the request for expenses, the Court shall:

- A. state the reasons for the denial in writing;
- B. attach the denial to the confidential request; and
- C. submit the request and denial as a sealed exhibit to the record.

**Procedure Without Court Approval:**

Appointed counsel may incur investigative or expert expenses without prior approval of the Court. On presentation of a claim for reimbursement, the Court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

Articles 26.05(d), 26.052(f), (g), and (h), Code of Criminal Procedure

**Payment Request Form**

Counsel shall submit their requests for payment on the approved Payment Request Form.

**Miscellaneous**

This plan is subject to amendments.

**Plan Documents**

Collin Juvenile Board Affidavit of Indigence.doc (12/8/2009 9:47:06 AM) [view](#)

Collin Juvenile Board Attorney Application for Appointment.pdf (12/8/2009 9:42:30 AM) [view](#)

Collin Juvenile Board Attorney Fee Voucher.pdf (12/8/2009 9:42:54 AM) [view](#)

**2009-2010 Fee Schedule for**  
**Indigent Defense Court Appointed Attorneys**

**JUVENILES**

**PLEAS:**

First & Second Degree Felonies: \$750

Third Degree & State Jail Felonies, all Drug cases and all Misdemeanors: \$500  
(\$200 for 2<sup>nd</sup> & each subsequent case at the discretion of the Judge)

**TRIALS:**

Pre-Trial: \$1000

\$375 per ½ day(9s) in trial

**APPEALS:**

Appeal from jury verdict or bench trial \$3,500

Other appeal \$2,000

**Each Judge has discretion to adjust fees in an additional amount not to exceed \$1,000.00.**

**The right of an attorney to appeal a fee amount to the Board of District Judges is eliminated. However, a Judge may still bring an exceptional fee request to the attention of the Board at his or her discretion.**